IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL SIDE JURISDICTION

PIL Writ Petition No. 129 of 2007

Mr M V.Holmagi
Advocate, High Court Bombay
having address at 12A Bhat
Shobha Bldg, R B Kadam Marg
Ghatkopar W Mumbai 400084 .. Petitioner

vs

1. Union of India
   through Foreign Affairs
   Ministry, Government of
   India and Addl Solicitor
   General, Govt of India
   High Court Annex Bldg Bombay

2. The Government of Australia
   through its Consulate General at
   Mumbai having office at Mumbai

3. The Government of UK
   thruogh its Consulate General
   having office at Mumbai

4. United National Organisation
   UNO through its office at
   Bombay through the concerned
   authorities) .. Respondents

Petitioner in persons.

CORAM: SWATANTER KUMAR, C.J., &
DR D.Y.CHANDRACHUD, J.

Judgment reserved on 11th Oct, 2007.
Judgment pronounced on 26.10.2007

JUDGMENT(PER SWATANTER KUMAR, C.J.):

The petitioner who is a practising advocate since 1977 has filed the present petition allegedly in public interest praying that directions be issued to respondent Nos. 2 and 3 to pay compensation of damage to India for alleged frivolous allegations made by them defaming India; directing them to tender unconditional apology; not to deny VISA or employment and educational opportunity to the Indian citizens.

In short the subject matter of the petition is about the arrest of an Indian National Mohd Hanif in Australia on the allegation of being involved in terrorist activities and the consequent news items on the said incident. It is alleged that the news items are branding Indians as terrorist in general and no action has been taken by the Government of India or the other Government or the UNO to step in and to deny the totally baseless allegations. On these allegations the petitioner is seeking the reliefs mentioned hereinabove.

It is not necessary for us to discuss in any detail the locus standi of the petitioner to file the present petition. Apparently the petitioner has raised general issues, of course, giving a dimension of national interest.

It is settled principle of law that public interest litigation is a weapon which has to be used with great care and circumspection. The courts have to be careful while entertaining such writ petitions. In the case of Rajiv Ranjan Singh Lalan (VIII) and anr vs Union of India and ors, (2006) 6 SCC 613, the Supreme Court has held as under:-

> "---The learned Solicitor General further submitted that there had been no interference by Mr. Lalu Prasad Yadav or his wife in any of the matters whether in the appointment of Judges or in the change of the prosecutor or in the decision not to file an appeal in the income tax cases. The learned Solicitor General cited T.N.Godavarman Thirumulpad (98) v Union of India ((2006) 5 SCC 28 (Hon. Y.K. Sabharwal C.J. And Arjit Pasyat and S.H. Kapadia, JJ), and submitted that: (SCC p 37, para 23):
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> "Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to

decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt....(and that) no trust can be placed by the court on a mala fide applicant in public interest litigation".

The learned Solicitor General submitted that now it is time to give a severe warning and sound alert since these are basic issues which are required to be satisfied by every public interest litigant. He also cited paras 25 and 26 in support of the contention that the writ petition is not maintainable at the instance of the political rivals.

Mr. Ram Jethmalani in regard to the maintainability of the writ petition cited the following decisions:

i) Janata Dal v H.S. Chowdhary (1992) 4 SCC 305) (2 Judges) (SCC p.348, para 109)

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL, will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but . not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before th court for vindicating an personal grievance, deserves rejection at the threshold";

ii) Dattaraj Nathuji Thaware vs State of Maharashtra, ((2005) 1 SCC 59)(Hon. Arjit Pasayat and Hon. S.H. Kapadia, JJ.) and invited our attention to paras 4,5, 9, 10,12 and 14.

iii) Ashok Kumar Pandey vs State of W.B ((2004) 3 SCC 349 (SCC p 357 para 12):

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and th judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public inquiry and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motive. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate case, with exemplary costs".

iv) S.P. Gupta v Union of India(1981 Supp SCC 87 (7 Judges) SCC p 219 para 24)

"24. But we must be careful to see that the member of the public who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration., The court must allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that 'political pressure groups who could not archive their aims through the administrative process' and we might add, through the political process, 'may try to use the courts to further

> their aims'. These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justifiability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does; not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution. It is a fascinating exercise for the court to deal with public interest litigation because it is new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born".

The courts while exercising jurisdiction and deciding a public interest litigation have to take great care, primarily for the reason that this wide jurisdiction should not become a source of abuse of process of law by a disgruntled litigant. The courts have also held that no efforts should be spared in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed. It has to be a genuine litigation, unmotivated and imposes an obligation upon a

litigant to come to the court with true facts and clean hands. Public interest litigations result in taking large court's time, which could not be used by the court for the benefit of common litigant. Thus it is more imperative that petitions which are bona fide and further the public cause alone should be entertained in this category.

In the case of Ashok Kumar Pandey vs State of W.B, 2004(3) SCC 349 the Supreme Court has held that the court has to strike a balance between two conflicting interests, (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In this very judgment the Court further enunciated that the principles of credentials of the applicant; prima facie correctness and nature of information given by him and also that the information is not vague and indefinite, are the criteria which the litigant should satisfy. The scope and gravity of the grievance is another relevant consideration for the court to entertain such litigations. If these ingredients are lacking, the Supreme Court further said that the courts should not entertain such public interest litigations. Similar view was

also taken in the case of Gurpal Singh vs State of Punjab and ors, 2005(5) SCC 136.

It is also true that a petition involving the question of public interest must be directly relatable to actual interest of the public at large, which has to be a substantial interest. It is not the title of the petition which would satisfy the ingredients of public interest litigation but it is the substance of the petition, which would be the determinative factor.

We see no reason to issue any directions as prayed for by the petitioner in the present petition and the same is dismissed with no order as to costs.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.